

CONSENT DECREE**I. Introduction**

1. This Consent Decree is entered into by and between the Media Bureau of the Federal Communications Commission and Utica College, by their respective authorized representatives, for the purpose of resolving certain issues regarding compliance with the Public File Rule, as defined below, that have arisen in the Media Bureau's review of the pending application for the renewal of the license for Station WPNR-FM, Utica, New York.

II. Definitions

2. For purposes of this Consent Decree, the following definitions shall apply:
- (a) "Act" means the Communications Act of 1934, as amended, 47 U.S.C. §151 *et. seq.*;
 - (b) "Application" means the pending application for the renewal of the license for Station WPNR-FM, Utica, New York (File No. BRED-20060412ABU);
 - (c) "Bureau" means the Media Bureau of the Federal Communications Commission;
 - (d) "Commission" or "FCC" means the Federal Communications Commission;
 - (e) "Compliance Plan" means the processes and procedures developed by the Licensee in an effort to ensure compliance with the Public File Rule at the Station, as summarized in the Appendix hereto;
 - (f) "Effective Date" means the date on which the Bureau releases the Order;
 - (g) "Execution Date" means the date on which this Consent Decree is executed by the last of the Parties to do so;
 - (h) "Licensee" refers to Utica College;
 - (i) "Order" means the Order of the Bureau adopting this Consent Decree;
 - (j) "Parties" means the Bureau and the Licensee;
 - (k) "Public File Rule" means Section 73.3527 of the Commission's rules, 47 C.F.R. § 73.3527;
 - (l) "Rules" means the Commission's Rules, found in Title 47 of the Code of Federal Regulations;
 - (m) "Station" means Station WPNR-FM, Utica, New York (Facility ID No. 64355);
 - (n) "Term" means the period of time in which the Compliance Plan is in effect; and
 - (o) "Violations" means the violations of the Public File Rule.

III. Background

3. On April 12, 2006, the Licensee filed the Application to renew its license for the Station. In the Application, the Licensee made disclosures to the Commission concerning compliance issues with respect to the Public File Rule. Because of the compliance issues raised by those disclosures, the Parties have agreed to enter into this Consent Decree, to which both the Licensee and the Bureau intend to be legally bound.

IV. Agreement

4. The Parties acknowledge that any proceeding that might result from the Public File Rule compliance issues referred to in Paragraph 3 above would be time-consuming and require a substantial expenditure of public and private resources. In order to conserve such resources, to resolve the matter, and to promote the Licensee's compliance with the Public File Rule, the Parties are entering into this Consent Decree, in consideration of the mutual commitments made herein.

5. The Licensee and the Bureau agree to be legally bound by the terms and conditions of this Consent Decree. Each represents and warrants to the other that its signatory is duly authorized to enter into this Consent Decree on its behalf. The Licensee agrees that the Bureau has jurisdiction over the matters contained in this Consent Decree and the authority to enter into and adopt this Consent Decree.

6. The Parties agree and acknowledge that this Consent Decree shall constitute a final settlement between the Licensee and the Bureau concerning the Licensee's Violations at the Station, as discussed herein.

7. In express reliance on the covenants and representations in this Consent Decree, the Bureau agrees that it will not use the Violations in any action against the Licensee, provided that the Licensee satisfies all of its obligations under this Consent Decree. In the event that the Licensee fails to satisfy any of its obligations under this Consent Decree, the Bureau may take any enforcement action available pursuant to the Act and the Rules with respect to each Violation, and/or the violation of this Consent Decree.

8. For purposes of this negotiated settlement only, the Licensee hereby stipulates that the Station violated the Public File Rule in the maintenance of the Station's public file during the current license term. The parties agree that this Consent Decree constitutes neither an adjudication nor precedent.

9. The Licensee agrees to make a voluntary contribution to the United States Treasury in the amount of Ten Thousand Dollars (\$10,000.00). Such contribution is due within thirty (30) days after the Effective Date. The payment must include FRN No. 0003407368 and the NAL/Acct. No. MB-200841410008. Payment by check or money order may be mailed to Federal Communications Commission, at P.O. Box 979088, St. Louis, MO 63197-9000. Payment by overnight mail may be sent to U.S. Bank—Government Lockbox #979088, SL-MO-C2-GL, 1005 Convention Plaza, St. Louis, MO 63101. Payment by wire transfer may be made to ABA Number 021030004, receiving bank: TREAS NYC, BNF: FCC/ACV--27000001 and account number as expressed on the remittance instrument. When completing the FCC Form 159, enter the NAL/Account number in block number 23A (call sign/other ID), and enter the letters "FORF" in block number 24A (payment type code).

10. The Bureau agrees to grant the Application after the Effective Date provided that the following conditions have been met: 1) the Licensee has fully and timely satisfied its obligation to make the voluntary contribution referenced in paragraph 9 of this Decree; and 2) there are no issues other than the Violations that would preclude grant of the application.

11. The Licensee represents that, in addition to its existing policies and procedures, it has adopted, is currently in the process of implementing, and agrees to abide by the Compliance Plan for the purpose of ensuring compliance with the Public File Rule. The Licensee agrees, to the extent that it has not already done so, to implement this Compliance Plan at the Station no later than thirty (30) days after the Effective Date and to keep such Compliance Plan in effect for three (3) years (the Term).

12. The Licensee represents that, as of the Execution Date of this Consent Decree, the Station's public file fully comports with the Public File Rule.

13. The Licensee agrees that it is required to comply with each individual condition of this Consent Decree. Each specific condition is a separate condition of the Consent Decree as approved. To the extent that the Licensee fails to satisfy any condition or Commission Rule, in the absence of Commission alteration of the condition or Rule, it will be deemed noncompliant and may be subject to possible enforcement action, including, but not limited to, revocation of the relief, designation of the matter for hearing, letters of admonishment and/or forfeitures.

14. The Consent Decree will be binding on the Licensee's successors-in-interest and assigns. The Licensee agrees that any future application to assign or transfer control of the Station will include a statement executed by an authorized representative of the proposed assignee or transferee consenting to assumption of the responsibilities and duties set forth in this Consent Decree with regard to the Station.

15. The Licensee waives any and all rights it may have to seek administrative or judicial reconsideration, review, appeal, or stay, or to otherwise challenge the validity of this Consent Decree and the Order, provided the Order adopts the Consent Decree without change, addition or modification.

16. The Licensee agrees to waive any claims it may otherwise have under the Equal Access to Justice Act, 5 U.S.C. Section 504 and 47 C.F.R. Section 1.1501 *et seq.*, relating to the matters discussed in this Consent Decree.

17. The Licensee and the Bureau agree that the effectiveness of this Consent Decree is expressly contingent upon issuance of the Order, provided the Order adopts the Consent Decree without change, addition or modification.

18. The Licensee and the Bureau agree that if the Licensee, the Commission or the United States on behalf of the Commission, brings a judicial action to enforce the terms of the Order adopting this Consent Decree, neither the Licensee nor the Commission will contest the validity of the Consent Decree or Order, and the Licensee and the Commission will waive any statutory right to a *trial de novo* with respect to any matter upon which the Order is based (provided in each case that the Order is limited to adopting the Consent Decree without change, addition, or modification), and will consent to a judgment incorporating the terms of this Consent Decree.

19. The Licensee and the Bureau agree that, in the event that this Consent Decree is rendered invalid by any court of competent jurisdiction, it will become null and void and may not be used in any manner in any legal proceeding.

20. This Consent Decree may be signed in counterparts and/or by telecopy and, when so executed, the counterparts, taken together, will constitute a legally binding and enforceable instrument whether executed by telecopy or by original signatures.

**MEDIA BUREAU
FEDERAL COMMUNICATIONS COMMISSION**

By: _____
Monica Shah Desai, Chief

Date: _____

UTICA COLLEGE

By: _____
Todd Hutton, President

Date: _____

APPENDIX**COMPLIANCE PLAN FOR STATION WPNR-FM.**

Utica College, or its successor-in-interest, as appropriate, will institute the following procedures during the Term to ensure compliance with the Commission's Public File Rule. Unless otherwise provided, all terms defined in the Consent Decree apply to this Compliance Plan.

- I.
 - A. The Station Manager and other appropriate staff of the Station will log all broadcasts of public affairs and public service programming broadcast by the Station. The logs of public affairs and other public service programming will be compiled into quarterly issues/programs lists and will be timely placed in the public file of the Station.
 - B. All such quarterly issues/programs lists will be signed and dated by their preparer before they are placed in the public file.
 - C. Any late-filed lists will be reviewed and signed by the Station's management and accompanied in the Station's public file with a statement indicating the nature of the document, the date placed in the public file, and the reason for the late filing.
 - D. The Station's management will train all employees concerning the absolute requirement to follow all Commission rules, regulations, and policies, specifically, fully explaining the obligations imposed by the Public File Rule to each employee charged with maintenance of the Station's public files. Should the Licensee or the Station's management learn that the Public File Rule has been violated, any employee responsible will be subject to appropriate disciplinary action, including suspension without pay and termination.
- II. During the Term, the Licensee and/or any successor licensee, as appropriate, will conduct in-house audits of the Station's public file as detailed below. The three-year Term period will terminate on the successful completion of the third annual public file audit pursuant to Item II(C). The second and third audits pursuant to Item II(C) will be due on the anniversary of the first audit. The audits of the public file shall be performed as follows:
 - A. quarterly audits of the Station's public file, either in person, by telephone or facsimile, will be conducted by FCC counsel or an authorized representative of the New York State Broadcasters Association under the Alternative Broadcast Inspection Program; 70 Fed. Reg. 24788 (May 11, 2005) ("ABIP");
 - B. a semi-annual review of the Station's public file will be conducted by the Station's management, with the first semi-annual review to be completed six (6) months after the Effective Date; and
 - C. annual, in-person, audits of the Station's public file will be conducted by an authorized representative of the New York State Broadcasters Association under the ABIP. The first annual audit shall be completed not more than nine (9) months following the Effective Date.

- III. During the Term, the Licensee shall annually submit a sworn certification to the Commission, signed by the Licensee, that the Station's public inspection file fully complies with the Public File Rule. If the Licensee cannot truthfully make this certification, it shall set forth in detail any public file deficiencies and describe any correct measures taken. This certification shall be filed within ten (10) days of the completion of the first annual public file audit pursuant to Item II(C) above, and on that date yearly thereafter during each year of the license term. A copy will be served on Peter H. Doyle, Chief, Audio Division, Media Bureau, Federal Communications Commission and e-mailed to him at peter.doyle@fcc.gov.
- IV. The Compliance Plan, set forth above, will be under the direct supervision of Utica College President, Todd Hutton, or by any member of the Utica College designated by Mr. Hutton, or in the event Mr. Hutton is no longer with Utica College or the license has been assigned, by his successor or his successor's designee on the Utica College or successor Licensee's Board.